

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

v. )

KENNETH WAGNER )

Cr. No. 03-10363-RWZ

FILED  
MAR 25 A 9:52  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

**KENNETH WAGNER'S MOTION TO CONTINUE THE FINAL STATUS DATE  
AND FOR LEAVE TO FILE A MOTION TO SUPPRESS**

Now Comes, defendant, Kenneth Wagner, who respectfully moves this Court to continue his final status date from April 6, 2004 to a date in early May 2004 that is convenient for the Court and for leave to file a Motion to Suppress. As grounds for this request, defendant states the following:

1. A new U.S. Supreme Court case entitled Fellers v. United States, 124 S.Ct. 1019 (January 26, 2004) found that eliciting statements from a defendant post indictment was a Sixth Amendment violation if counsel was not present or a waiver of counsel was not obtained.

2. The government has provided defendant with his statement made to the DOT investigators on December 4, 2003. Before he made a statement, the investigators served him with an indictment for the instant case. See Wagner Statement attached as Exhibit A.

3. The government agents then proceeded to inquire with him about his alleged false statements without counsel being present

and without obtaining a waiver of counsel. See Exhibit A. See Affidavit of Kenneth Wagner attached as Exhibit B. This was all done in violation of Fellers.

4. Wherefore, defendant would like to file a Motion to Suppress with Memorandum by April 16, 2004. Defendant suggests that the government should respond two weeks thereafter.

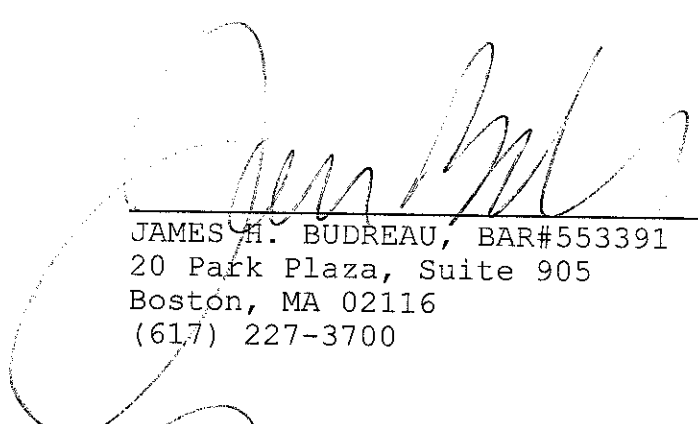
5. Defense counsel is on trial before Judge O'Toole during the week of May 3<sup>rd</sup>. Counsel will be appearing before Judge Alexander on May 5, 2004 at 3:30 pm for a conference on another case. If this Court and the government finds 3:00 pm on May 5<sup>th</sup> convenient, then he suggests that as a date for the Final Status Conference in the above referenced case.

6. Counsel has attempted to contact AUSA Pellegrine to discuss the above issues, but without success.

7. Defendant agrees to waive all time from April 6, 2004 to the new date ordered by the Court pursuant to the Speedy Trial Act.

Wherefore, defendant moves this Court to grant his motion for the reasons stated above.

Respectfully submitted,  
BY HIS ATTORNEY,



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I hereby certify that a true and correct copy of the foregoing document was served by hand on the 25th day of March 2004 to Assistant U.S. Nadine Pellegrini.



James H. Budreau